

Via Facsimile No. 703-872-9306

9D-RG-19254
PATENT

REMARKS

The Office Action mailed August 17, 2004, has been carefully reviewed and the following remarks are made in consequence thereof.

Claims 1, 3-12, and 14-19 are now pending in this application. Claims 1, 3-12, and 14-19 stand rejected.

The rejection of Claims 1 and 3-8 under 35 U.S.C. § 103(a) as being unpatentable over Atanasio (U.S. Patent No. 5,103,799) in view of by Koziol (U.S. Patent No. 4,848,217) is respectfully traversed.

Atanasio describes a collapsible barbecue grill including a pair of frames (10) and (12). The frame (10) includes a pair of parallel, laterally spaced side members (14) and (16) and a plurality of longitudinally spaced cross members (18) joined to the respective side members (14) and (16). Similarly, the frame (12) includes a pair of parallel, laterally spaced side members (20) and (22), and a plurality of longitudinally spaced cross members (24) integrally joined at their opposite ends to the respective side members (20) and (22). The frames (10) and (12) are hinged together at their adjacent ends, by loops (26) at the ends of the side members (20) and (22) of the frame (12) which encircle the cross member (18a) at an upturned end (28) of frame (10). A third frame (56) includes laterally and longitudinally spaced members (58) and (60) integrally connected at their crossing points to define a food support grid. Notably, the cross member (18a) is elevated slightly above the plane of the frame (10) by upturned bends (28) at the ends of the side members (14), (16) to facilitate movement of the frame (12) between collapsed and raised positions (col. 2, lines 1-8).

Koziol describes a multipurpose cooking rack (10) including a body portion (11) composed of a multiplicity of V-shaped wires (12) spaced equidistantly along a longitudinal axis. The V-shaped wires are interconnected by longitudinally extending wires (14). Wires (15) providing peripheral support and wires (16) which are intermediate peripheral wires (15) and the

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Via Facsimile No. 703-872-9306

9D-RG-19254
PATENT

apex of the "V" provide the intermediate support. Combined handle and foot members (18) are attached at the ends of body portion 11 (col. 2, lines 47-60). The V-shaped wires terminate in impaling members (13) having ends terminating in a point (28) so as to aid in the piercing or impaling of food items (col. 2, line 63 – col. 3, line 3). Notably, when the rack is used with the impaling members extending downward, the food impaling members do not extend to contact the roasting surface so that their sharpened points will not be dulled (col. 3, lines 13-16). The food impaling members, therefore, cannot act as support legs.

Applicant respectfully submits that the Section 103 rejection of the presently pending claims is not a proper rejection. Obviousness cannot be established by merely suggesting that it would have been obvious to one of ordinary skill in the art to modify Atanasio according to the teachings of Koziol. More specifically, as is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention absent some teaching, suggestion, or incentive supporting the combination. Neither Atanasio nor Koziol considered alone or in combination, describe or suggest the claimed combination. Rather, the present Section 103 rejection appears to be based on a combination of teachings selected from multiple patents in an attempt to arrive at the claimed invention. Specifically, Atanasio is cited for teaching a grill, Koziol is cited for teaching that cooking racks can be used in ovens. Since there is no teaching or suggestion in the cited art of the claimed combination, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present invention. Of course, such a combination is impermissible, and for this reason alone, Applicant respectfully requests that the Section 103 rejection of Claims 1 and 3-8 be withdrawn.

As the Federal Circuit has recognized, obviousness is not established merely by combining references having different individual elements of pending claims. *Ex parte Levengood*, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP 2143.01. Rather, if proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.

Via Facsimile No. 703-872-9306

9D-RG-19254
PATENT

In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). Furthermore, if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). In the grill of Atanasio, the food product being cooked is placed on the third frame (56) which is then lifted and positioned on the second frame (12) using the handle (71) (Col. 3, lines 5-52). If the grill were placed in a conventional oven as suggested in the Office Action, the second frame (12) would be at the front of the oven. Oriented in this manner, the third frame and handle would be inaccessible to the user. Thus, the purpose of the third frame (56) and handle (71) would be frustrated such that the grill could not be used as intended. For the reasons set forth above, it is respectfully asserted that a *prima facie* case of obviousness has not been established. Consequently, Applicant respectfully requests that the Section 103 rejection of Claims 1 and 3-8 be withdrawn.

Claims 1 recites an oven rack including "a first portion comprising a first side and a second side and a front edge extending therebetween, said first portion having a substantially planar top surface; a support system attached to said first portion between said first and second sides, said support system comprising at least a first leg and a second leg rearwardly displaced from said first leg, said first and second legs attached to said first portion; a second portion extending obliquely from said first portion; and at least one handle extending from said first side of said first portion adjacent said front edge".

Neither Atanasio nor Koziol, considered alone or in combination, describe or suggest an oven rack including a first portion comprising a first side and a second side and a front edge extending therebetween, said first portion having a substantially planar top surface, and a support system attached to the first portion between the first and second sides, wherein the support system includes at least a first leg and a second leg rearwardly displaced from the first leg, and wherein the first and second legs are attached to the first portion, and further, the oven rack including a second portion extending obliquely from the first portion, and at least one handle

Via Facsimile No. 703-872-9306

9D-RG-19254
PATENT

extending from the first side of the first portion adjacent the front edge. Moreover, neither Atanasio nor Koziol, considered alone or in combination, describe or suggest a first portion having a substantially planar top surface and a handle extending from the first portion adjacent the front edge. Rather, Atanasio describes a first frame (10) without a handle adjacent the front edge, and Koziol describes a handle between first and second portions.

Applicant respectfully traverses the assertion in the Office Action that the upturned bends (28) could function as a handle. As described in Atanasio, the upturned bends are provided to elevate the cross member (18a) slightly above the plane of the frame (10) to facilitate movement of the frame (12) between collapsed and raised positions (col. 2, lines 1-8). Webster's New World Dictionary, at page 611 (see attached) defines handle as "that part of a utensil, tool, etc. which is to be held, turned, lifted, pulled, etc. with the hand". Applicant respectfully asserts that the upturned bends (28) could not reasonably be considered to function as a handle.

For the reasons set forth above, Claim 1 is submitted to be patentable over Atanasio in view of Koziol.

Claims 3-8 depend from independent Claim 1. When the recitations of Claims 3-8 are considered in combination with the recitations of Claim 1, Applicant submits that dependent Claims 3-8 likewise are patentable over Atanasio in view of Koziol.

For the reasons set forth above, Applicant respectfully requests that the Section 103(a) rejection of Claims 1 and 3-8 be withdrawn.

The rejection of Claims 9-12 and 14-19 under 35 U.S.C. § 103(a) as being unpatentable over Atanasio in view of Koziol as applied above, and further in view of Carpenter et al. (U.S. Patent No. 3,266,484) and Merriam Webster's Collegiate Dictionary, Tenth Edition is respectfully traversed.

Atanasio and Koziol are described above. Carpenter et al. describe a broiler rack including a main rack (11) and an auxiliary rack support structure (12) arranged below the main

Via Facsimile No. 703-872-9306

9D-RG-19254
PATENT

rack (11) at one side of an oven. The auxiliary support structure (12) can be collapsed and locked against the main rack. The main rack and auxiliary support structure are constructed of ordinary wire or rod (col. 2, lines 24-30). Notably this broiler apparatus attaches to the upper portion of the oven and does not contact the oven floor or bottom surface.

Applicant respectfully submits that the Section 103 rejection of the presently pending claims is not a proper rejection. Obviousness cannot be established by merely suggesting that it would have been obvious to one of ordinary skill in the art to modify Atanasio according to the teachings of Koziol and Carpenter et al. More specifically, as is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention absent some teaching, suggestion, or incentive supporting the combination. None of Atanasio, Koziol or Carpenter et al., considered alone or in combination, describe or suggest the claimed combination. Rather, the present Section 103 rejection appears to be based on a combination of teachings selected from multiple patents in an attempt to arrive at the claimed invention. Specifically, Atanasio is cited for teaching a grill, Koziol is cited for teaching that cooking racks can be used in ovens, and Carpenter et al. are cited for teaching an oven having a bottom surface and at least three sides. Since there is no teaching or suggestion in the cited art of the claimed combination, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present invention. Of course, such a combination is impermissible, and for this reason alone, Applicant respectfully requests that the Section 103 rejection of Claims 9-12 and 14-19 be withdrawn.

As the Federal Circuit has recognized, obviousness is not established merely by combining references having different individual elements of pending claims. *Ex parte Levingood*, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP 2143.01. Rather, there must be some suggestion, outside of Applicant's disclosure, in the prior art to combine such references, and a reasonable expectation of success must be both found in the prior art, and not based on Applicant's disclosure. *In re Vaeck*, 20 U.S.P.Q.2d 1436 (Fed. Cir. 1991). In the

Via Facsimile No. 703-872-9306

9D-RG-19254
PATENT

present case, neither a suggestion or motivation to combine the prior art disclosures, nor any reasonable expectation of success has been shown.

Claim 9 recites an oven including "a cooking chamber comprising a bottom surface, and at least three sides; an oven rack configured to rest on said bottom surface of said cooking chamber, said oven rack comprising a first portion having a first side and a second side, said first portion having a substantially planar top surface; and a support system attached to said oven rack first portion between said first and second sides, said support system comprising at least a first leg and a second leg rearwardly displaced from said first leg, said first and second legs fixedly attached to said first portion".

None of Atanasio, Koziol, and Carpenter et al., considered alone or in combination, describe or suggest an oven including a cooking chamber including a bottom surface, and at least three sides, an oven rack configured to rest on the bottom surface of the cooking chamber, the oven rack including a first portion having a first side and a second side, the first portion having a substantially planar top surface, and a support system attached to the oven rack first portion between the first and second sides, the support system including at least a first leg and a second leg rearwardly displaced from the first leg, the first and second legs fixedly attached to the first portion. Moreover, none of Atanasio, Koziol and Carpenter et al., considered alone or in combination, describe or suggest a support system including a first leg and a second leg rearwardly displaced from the first leg, the first and second legs fixedly attached to the first portion. Rather, Atanasio describes a portable grill having folding legs, Koziol describes a rack having feet/handles at the ends of the rack with only one leg attached to a first portion of the rack, and Carpenter et al. describe a broiler rack mounted to a main rack in the upper portion of an oven.

Applicant respectfully traverses the assertion in the Office Action that the folding legs of the Atanasio grill are fixedly attached to the first portion of a rack. During patent examination, the pending claims must be given their broadest reasonable interpretation consistent with the

Via Facsimile No. 703-872-9306

9D-RG-19254
PATENT

specification. *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). In the dictionary definition of "fixedly" referenced in the Office Action, the complete 1a definition is given as "securely placed or fastened : STATIONARY". In the present application, it is clear from the drawings that the legs are stationary with respect to the first portion. This clearly does not apply to the legs of the Atanasio device which, although they provide support for the grill, can also pivot and be folded.

For the reasons set forth above, Claim 9 is submitted to be patentable over Atanasio in view of Koziol and further in view of Carpenter et al. and Merriam Webster's Collegiate Dictionary, Tenth Edition.

Claims 10-12 and 14-19 depend from independent Claim 9. When the recitations of Claims 10-12 and 14-19 are considered in combination with the recitations of Claim 9, Applicant submits that dependent Claims 10-12 and 14-19 likewise are patentable over Atanasio in view of Koziol and further in view of Carpenter et al.

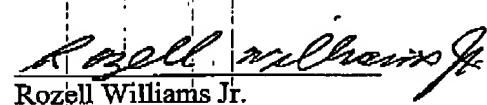
For the reasons set forth above, Applicant respectfully requests that the Section 103 rejection of Claims 9-12 and 14-19 be withdrawn.

Via Facsimile No. 703-872-9306

9D-RG-19254
PATENT

In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,



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